

## **An Ethical Approach to Meeting Needs in Adult Social Care**

### **How the BASW Code of Ethics can help social workers to improve application of the Care Act to decisions about resource allocation**

#### **Introduction**

1. This guidance outlines how social workers can use the [BASW Code of Ethics for Social Work](#) to assert their professional judgement where there are concerns that financial pressures are leading to unjust decisions, and the needs of people who require care and support being unmet and under-met.
2. As well as providing support for BASW members, this policy statement and its subsequent development aims to improve the way that local authorities apply the requirements of the Care Act 2014 and the statutory guidance.
3. Elsewhere BASW England is responding to proposals for social care reform. However, this policy paper focuses on how best to support social workers in addressing ethical concerns in the here-and-now of applying the Care Act.

#### **Summary**

1. The core proposition of this guidance is that the tensions that can produce ethical dilemmas should be openly acknowledged and local procedures put in place to manage them effectively and transparently. Through this guidance BASW England is encouraging social workers to assert their professional judgement and make more transparent the relationship between professional judgement and managing expenditure, and asking that employers of social workers support this. BASW England believes that this clarity will enable people with care and support needs, and other professionals, to better understand the role of social workers in decisions about the allocation of resources to individuals
2. The aims of this guidance are to:
  - a. identify the nature of these ethical dilemmas in the resource decisions that social workers are involved in;
  - b. consider how the Code of Ethics can be applied to address circumstances where local authority policies and practices designed to reduce expenditure, raise ethical concerns;
  - c. suggest actions that local authorities and other employers of social workers, could adopt to support social workers in making decisions that are in accordance with the social work values and ethical principles expressed in the Code of Ethics;
  - d. outline how the guidance can be used both at an individual level and also as a basis for local changes to policy and practice;
  - e. provide support for implementation of this guidance by encouraging further debate about how to apply the recommendations in this guidance, providing learning opportunities and supporting research.
3. In many public services there is a tension to be managed between professional judgements that incur expenditure and ensuring that the public body in question keeps

within its budget. The most explicit expression of this tension in adult social care is in the decision-making process to determine how care and support needs will be met. The Care and Support Statutory Guidance that accompanies the Care Act, provides a framework that aims to manage this tension in a fair and balanced way, and also ensures that it can be easily understood by people with care and support needs and their carers.

4. Although there is widespread support in the adult social care sector for the approach set out in the Care Act, it is sometimes applied in ways that are of concern. This is evidenced in the following quote from a report produced by the Local Government Association in 2018 about how adult social care could be better funded: “The Care Act remains the right legal basis for social care but funding pressures are threatening the spirit and letter of the law.”<sup>5</sup> This is also acknowledged to some extent in the Government White Paper, *People at the Heart of Care (December 2021)*, which says that the Care Act “should serve as the foundation for social care reform and our long-term vision”, but goes on to state: “We acknowledge that the full spirit of the Care Act is not currently being met”<sup>6</sup>.
5. In some local authorities the way that the controlling of expenditure is being achieved gives rise to ethical concerns because of unjust policies and practices and constraints on social workers professional judgements, and this can be compounded by practices that discourage transparency making it difficult for social workers to justify the decisions of the local authority to people who use services.

## Outline

1. Scope and status of this guidance
2. The impact of financial pressure on how need should be met in accordance with the requirements of the Care Act.
3. An exploration of how the Code of Ethics can be applied to the decisions that social workers are involved in.
4. Next steps in developing and applying the proposals in this guidance.

## SCOPE AND STATUS

### Scope

1. The Code of Ethics<sup>1</sup> sets out the ethical issues that social workers can and should address, and it also provides a framework within which these issues can be analysed. The aim of the code is “to encourage social workers across the UK to reflect on the challenges and dilemmas that face them and make ethically informed decisions about how to act in each particular case in accordance with the values of the profession”, but it “is not designed to provide a detailed set of rules about how social workers should act in specific situations or practice guidance” (section 1.1).
2. This guidance is intended to supplement the Code of Ethics and is about the decisions that determine how agreed care and support needs will be met, where this results in needs being unmet and under-met. Inevitably this means there is a focus on the amount of money that will be required to meet needs i.e. the personal budget, but reference is also made to other key decisions that inform the final decision made by the local authority about how needs should be met.
3. Social workers who work with adults experience other significant ethical dilemmas e.g. in relation to safeguarding, but these are beyond the scope of this guidance.
4. The guidance applies to all social workers, both practitioners and managers, who are involved in decisions about the amount of the personal budget, or contribute to these decisions through assessments of care and support needs. It therefore applies to social

workers employed by local authorities and social workers employed by the NHS, and any other organisation contracted by a local authority to undertake such tasks.

5. The guidance relies mainly on the Code of Ethics in developing advice on how to address ethical dilemmas. The aim is to demonstrate how the Code of Ethics can be applied to specific situations, and in so doing provides contextual guidance for social workers about how to decide what is and isn't ethical. It also takes into account Social Work England Professional Standards Guidance<sup>2</sup>, the Professional Capability Framework (PCF)<sup>3</sup> and the Knowledge and Skills Statement for Adults<sup>4</sup>.
6. The focus is on setting out the issues and making a number of outcome-focused proposals. The guidance does not set out the detail of how these outcomes could be achieved, as there will be different opinions about this.

## **Status of this BASW Guidance**

1. Social Work England outlines the requirements of an ethical approach but defers to BASW as the determiner of the ethical framework. Therefore, this guidance can be considered definitive on the matters that are addressed.
2. A key undertaking required of social workers is set out in 3.1 of the Social Work England 'Professional Standards' as follows: "Work within legal and ethical frameworks, using my professional authority and judgement appropriately".
3. The accompanying 'Professional Standards Guidance' states: "Many social workers follow ethical values or principles to guide their work. The British Association of Social Workers (BASW) and the International Federation of Social Work (IFSW) both have codes of ethics that social workers in England follow.

## **THE CARE ACT, FINANCIAL PRESSURES AND MEETING NEED**

### **The Care Act**

1. Much of what social workers do when undertaking assessment and care and support planning, is about applying the detailed statutory guidance for the Care Act in accordance with social work values, theory and practice. The statutory guidance sets out the parameters of the decision to be taken, but does not specify what social workers must and should consider in applying their professional knowledge and skills in making professional judgements, or how they should be made. Whilst much has been written about how to apply the safeguarding requirements set out in the Act and the statutory guidance, and also how to develop strengths-based practice, there is no authoritative good practice guidance on how to address the ethical dilemmas of resource allocation.
2. The Care Act is clear that where an individual has been determined to have eligible needs by a local authority and there is a duty to meet them, funding must be available that is sufficient to meet those needs. Where the individual lacks their own financial resources, this funding must be provided by local authorities.
3. The statutory guidance emphasises the importance of individuals understanding how resource allocation decisions are made, as stated in paragraph 11.4: "It is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust so that people have confidence that the personal budget allocation is correct and therefore sufficient to meet their care and support needs."
4. This good practice guidance has been developed to provide support to social workers in providing an ethical response where the funding from the local authority is not sufficient, resulting in under-met and unmet need, and there is a lack of transparency about how decisions are made.

## Financial pressures

1. The amount of funding for adult social care available to local authorities has been outstripped by increased demand for some time, so they are having to find what the Ombudsman describes as “imaginative” ways of managing their resources<sup>7</sup>. This has sometimes resulted in personal budgets being determined in ways that do not fully take account of social workers professional judgements.
2. More recently we have seen the results of this in the ADASS survey of September 2021 which reported: “Almost 400,000 people are now waiting for an assessment of their needs or service”.
3. Since the inception of the Care Act there have been numerous complaints to the Ombudsman where personal budgets have been inappropriately reduced and arbitrary upper limits have been imposed. In 2018 the Ombudsman criticised local authorities for creating circumstances where frontline staff “are sometimes at risk of having professional judgement overshadowed by the pressure to meet financially driven targets”<sup>8</sup>.
4. Many local authorities have been revising their charging policies to increase their income from individuals who are assessed to pay a financial contribution for all or part of their personal budget. This has led to people deciding not have services because they cannot afford to pay, and others who are going into a debt as a result of the increased charges. At the end of 2020 in the *SH v Norfolk County Council* judicial review Justice Griffiths upheld the claim from SH that the decision of Norfolk “to change the basis on which it calculates the charges made to her for Council-provided care... indirectly discriminates against her as a severely disabled person in breach of her rights under the Human Rights Act 1998, the European Convention on Human Rights and the Equality Act 2010”.
5. As well as conflict over individual cases, ethical conflicts can also arise when employers develop initiatives to try to cut costs e.g. by reviewing cases in circumstances that do not follow the statutory guidance about when a review should take place. For example, the Ombudsman has upheld complaints such as in case number 16015946 where the decision “appears to have been part of a general withdrawal of provision and a cost cutting exercise”. In this case the Ombudsman concluded that the decision was “not based on assessments of need and was therefore in breach of the requirements of the Care Act”, and that it resulted in some of the adult’s eligible needs being unmet and forcing “an unwilling carer to provide care she reasonably states she cannot give”.
6. The key tension between professional judgement and controlling expenditure is expressed in the Care and Support Statutory Guidance in the following:
  - a) “The personal budget must always be an amount sufficient to meet the person’s care and support needs” (paragraph 11.10).
  - b) “In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position” (paragraph 10.27).The statutory guidance simply states these principles and provides no detailed guidance about how this tension can be managed, other than the following caveats:
  - “Decisions should therefore be based on outcomes and value for money, rather than purely financially motivated” (paragraph 11.27).
  - “the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes” (paragraph 10.27).
7. This tension is a necessary part of the process, but there are indications from the Ombudsman that in some local authorities the balance has tipped in favour of financial requirements. Similar views were expressed by members who responded to the 2019 consultation on the Future of Adult Social Care e.g. “Currently resources govern the outcome of assessments and there is a widening gap between unmet needs and service provision.”

## **The impact on ethical responsibilities in meeting need**

1. Where people with care and support needs and carers have had their needs assessed as being eligible, the local authority has a legal duty to meet these needs that are not being met, except in certain circumstances e.g. a carer is willingly meeting an individual's needs. Where the individual's financial circumstances are below certain levels, there is also a requirement that the local authority fund (wholly or partly) the personal budget that is deemed necessary to meet their needs.
2. Unmet need can occur as a result of delays in providing the necessary funding. It can also be due to misinterpretation of the law and statutory guidance (as evident in judicial reviews and complaints to the Ombudsman) or as a result of poor practice.
3. Unmet need can also occur where people wait for an assessment for an unreasonable amount of time, and therefore have potential unmet needs. The requirement of the statutory guidance is that assessments should be carried out over an appropriate and reasonable timescale according to the urgency of those needs.
4. Where it is thought that the amount of the personal budget is not sufficient to meet eligible needs, this is sometimes described as under-met need. This can occur where a social worker's professional judgement has not been properly taken into consideration in determining what is sufficient to meet needs.
5. Where the decision-making is clear and transparent, as outlined below, potential unmet and under-met need can be identified openly and honestly. If it is clear how the personal budget has been worked out and how a social worker's professional judgment is taken into account, then disagreements with the final decision can be addressed.

### ETHICAL DECISION-MAKING

## **The Code of Ethics for Social Work**

1. The principles set out in the Care Act are generally compatible with the values and ethical principles of the Code of Ethics in respect of human rights, social justice and professional integrity. But there can be circumstances where the application of the principles and requirements of Care Act is of concern. Where this is the case the following sections from the Code of Ethics may be applicable:

### MAKING CONSIDERED PROFESSIONAL JUDGEMENTS

Social workers should make judgements based on balanced and considered reasoning. They should maintain awareness of the impact of their own values, prejudices and conflicts of interest on their practice. These judgments should be made in partnership with the people who will be affected. Social workers should be aware of the impact of their presence can have on people who use social work services and their relationships with others.

### BEING TRANSPARENT AND PROFESSIONALLY ACCOUNTABLE

Social workers should be prepared to account for and justify their judgements and actions to people who use services, to employers and the general public, in terms that are comprehensible to the people concerned. to people who use services, to employers and the general public.

### CHALLENGING UNJUST POLICIES AND PRACTICES

Social workers are expected to bring to the attention of their employers, policy makers, politicians and the general public situations where resources are inadequate,

and/or where distribution of resources, policies and practice are oppressive, discriminatory or otherwise unfair, harmful or illegal.

## CHALLENGING THE ABUSE OF HUMAN RIGHTS

Social workers should be prepared to challenge oppressive, ineffective and unjust policies, procedures and practice. They should challenge the abuse of power and the exclusion of people from decisions that affect them.

2. Where social workers have serious concerns, they should consider the following:  
**BEING PREPARED TO WHISTLEBLOW**

Social workers must report situations where they have significant unresolved ethical dilemmas, using all available channels including complaints procedures. If necessary social workers should be prepared to use public interest disclosure legislation and whistleblowing guidelines.

## Other guidance on ethics

### A] Professional Capability Framework (PCF)

1. All of the experience levels in the PCF contain a section on values and ethics that includes the following statement:  
“Social workers have an obligation to conduct themselves ethically and to engage in ethical decision-making, including through partnership with people who use their services. Social workers are knowledgeable about the value base of their profession, its ethical standards and relevant law.”
2. This applies in different ways to the different levels of experience, and each includes a specific statement on ethics. For example, the expectation for social work students on their first placement is as follows:  
“Identify and, with guidance, manage potentially conflicting values and ethical dilemmas”.

For social workers practicing at the Advanced Level the expectation is as follows:

“Demonstrate confident management and arbitration of ethical dilemmas, providing guidance and opportunities for professional development.”

### B] Social Work England

1. Section 6 is entitled “Promote ethical practice and report concerns” and this includes:  
6.2 “Reflect on my working environment and where necessary challenge practices, systems and processes to uphold Social Work England’s professional standards”  
6.5 “Raise concerns about organisational wrongdoing and cultures of inappropriate and unsafe practice”.

## Being professionally accountable

1. Social workers can avoid or minimise ethical dilemmas through transparent accounting for and justifying of their professional judgements and actions, to people with care and support needs and their employers. The transparency principle applies throughout the process of assessment and care planning and is a key element of the person-centred approach advocated by the statutory guidance.
2. Social workers have the task of explaining to people what resources can be provided by the local authority to meet their care and support needs. Helping people to understand and accept the decision is a skilled task, especially where the decision about the amount

of personal budget is less than what had been anticipated.

3. The personal budget is determined through a combination of elements, and professional judgement plays a part in this, as does the taking into account of the local authority's overall financial resources. The statutory guidance states: "It is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust so that people have confidence that the personal budget allocation is correct and therefore sufficient to meet their care and support needs".
4. It is contended that a high degree of clarity and transparency is needed about how professional judgements are being made, and also their relationship with each other. The outcome of each professional judgement should be transparent, so that where there are different views within the local authority and where the preferences of adults and carers are not going to be adhered to, it should be clear who has made the final decision at each of the stages of the care and support process, and the extent to which the professional judgement has been taken into account.
5. There are a number of significant decision-making processes leading up the decision about what resources can be allocated to meet need where skilled professional judgement, made in partnership with individuals with care and support needs, is essential:
  - a) preventing, reducing, or delaying needs for care and support
  - b) significant impact on wellbeing of needs not being met
  - c) meeting non-eligible needs
  - d) sufficiency of the personal budget
6. The key professional judgement about how needs will be met is whether the personal budget is sufficient to meet the individual's eligible care and support needs. However, each of the preceding decisions will have an impact on what needs are to be met.

## **Making considered professional judgements**

1. Social Work England describes how social workers should make professional judgements by stating that they "will listen to people, without bias or prejudice, and use evidence from assessments, alongside social work theories, models and research" and that it is important that decisions "are discussed with people, employers, peers or in supervision to challenge thinking and test assumptions", and in so doing this "supports social workers to consider ethical dilemmas".
2. Sometimes the challenge to a professional judgement can result in the social worker having to robustly argue their case, e.g. at a funding panel or where there is a complaint from the person with care and support needs.
3. Some social workers can experience scrutiny and challenge to their professional judgement in an unsatisfactory way e.g. being told at the final stage of the process that the proposed care and support plan 'costs too much'. This is most often being experienced in the decision-making process to determine the personal budget via funding panels<sup>9</sup>. In other local authorities, social workers report experiencing scrutiny and challenge as being positive and constructive.
4. Where an individual is disputing their personal budget, a social worker may believe that that this could be resolved if greater account is taken of the social worker's professional judgement about what is sufficient to meet the individual's needs. If there is transparent decision-making, any difference between the social worker's professional judgement and the final decision will be apparent to the individual in dispute, and they can use this to argue their case. Where there is a lack of transparency, social workers could conclude that they are ethically bound to make the individual and any representative they may have, aware of any such difference.

5. There can be circumstances where an individual's challenge to the local authority decision rests on the social worker's professional judgement, but where the amount of the personal budget is presented as a corporate decision this may not be apparent. Where there is full transparency the social worker's professional judgement can be made clear.

## **Unjust policies and practices and abuse of human rights**

1. Social workers are understandably concerned about applying local policies and practices that may result in need being unmet or undermet. To some extent these ethical concerns about outcomes can be addressed by improving transparency. But there may also be concerns about the way that decisions are being made and that the requirements of the legislation and statutory guidance are not being followed, or at worst being subverted.
2. There is certainly compelling anecdotal evidence that some people with care and support needs have experienced the review process as unfairly cutting their personal budgets and that they have been excluded from decisions that affect them<sup>8</sup>. Also, the Ombudsman has ruled against some local authorities for wrongly reducing personal budgets and seeking to cap costs. There are also reports that indicate that some local authorities are interpreting the statutory guidance in ways that are of ethical concern<sup>9</sup>.
3. In circumstances where there may be a case for reducing the amount of the personal budget, it is essential that the process is fair and that the statutory guidance is followed. It has been clearly established in law that personal budgets can be reduced, as in the case of *Luke Davey vs Oxfordshire County Council (2017)*. But there has to be a good reason and proper process must be followed, as shown in *JF vs Merton (2017)*.
4. Social workers need to be alert to circumstances where policies or practices are introduced that are contrary to the statutory guidance. In a recent annual report of the Ombudsman it states: "We will be critical where councils adopt blanket policies that fail to anticipate wider consequences" and gives examples attempts to impose "a blanket policy of a maximum number of days of respite support per year"<sup>10</sup>. Also undertaking reviews with a view to cutting costs that do not meet the statutory criteria for a review and revision of a care and support plan. It is BASW's contention that these cost-cutting exercises rarely generate significant savings and are wasteful of social work resources, as well as being contrary to the statutory guidance.

## **Whistleblowing**

1. All local authorities have a whistleblowing policy and procedure, and the intention is that they should only be used where all other channels have failed to address legitimate concerns. It may be more effective to openly address issues formally with the support of BASW and /or SWU.
2. It is hoped that local authorities will develop approaches that allow for more explicit recognition and management of ethical concerns, so that whistleblowing would never be necessary.

## **CONCLUSIONS, RECOMMENDATIONS AND NEXT STEPS**

### **Conclusions**

1. The principal outcomes of this policy statement are to encourage social workers to more clearly articulate their professional judgement and to initiate a debate about how to better manage the ethical dilemmas that can arise from decision-making about the allocation of resources to individuals.



2. Hopefully these suggestions will help ameliorate the difficulties that derive from tension between making good professional judgements within the framework required by the Care Act, and the financial pressures on local authorities to reduce expenditure. However, it is recognised there is more to be done in establishing good practice and in monitoring and highlighting poor practices and breaches of the Care Act.

## Recommendations

1. Social workers should be expected as a matter of ethical practice to clearly state their professional judgements when contributing to the local authority decision about how individual needs will be met, and to identify where there is under-met need and potential unmet need. This should be supported by employers and built in to the routine of the way that assessment and care and support planning is undertaken. It should also be recognised by employers that sometimes things go wrong and unmet need can occur, and this should be rectified in an open and honest way.
2. There will be occasions when local authorities 'bend the rules', and even take steps that are not legal or are contrary to the statutory guidance. Social workers must use their expertise to counsel against this, and where bad practice is not rectified members should seek advice from BASW about how to proceed.

## Applying and developing the guidance

BASW England will undertake the following:

- a) seek support for these conclusions and recommendations from other organisations, such as those representing principal social workers, employers, trades unions, people with lived experience and other professionals;
- b) engage with the CQC to influence the way they assess the social work role in implementing the Care Act;
- c) support the Health and Social Care Delivery Research (HSDR) Programme of "research to evaluate the effectiveness, implementation, and impact of social care needs assessment and care planning"<sup>11</sup>;
- d) support the Equality and Human Rights Commission "inquiry into challenging decisions about adult social care"<sup>12</sup>;
- e) provide learning opportunities for BASW members to develop their individual knowledge and skills in applying an ethical approach.

## REFERENCES

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